

§ 1902.47

reasonable time, generally not less than 1 year, in which to meet the criteria for an affirmative 18(e) determination.

(2) The Assistant Secretary shall also publish a notice in the FEDERAL REGISTER outlining his reasons for not making an affirmative 18(e) determination at the time. The notice will also set forth the reasonable time the State was granted to meet the criteria for an affirmative 18(e) determination and set forth such conditions as the Assistant Secretary deems proper for the continuation of the State's plan or such portions subject to this action.

(3) The State shall be afforded an opportunity to agree to the conditions of the Assistant Secretary's decision.

(4) Upon the expiration of the time granted to a State to meet the criteria for an affirmative 18(e) determination under paragraph (d)(2) of this section, the Assistant Secretary may initiate proceedings to determine whether a State shall be granted an affirmative 18(e) determination. The procedures outlined in this subpart shall be applicable to any proceedings initiated under this paragraph.

PROCEDURE FOR RECONSIDERATION AND REVOCATION OF AN AFFIRMATIVE 18(e) DETERMINATION

§ 1902.47 Reconsideration of an affirmative 18(e) determination.

(a) The Assistant Secretary may at any time reconsider on his own initiative or on petition of an interested person his decision granting an affirmative 18(e) determination.

(b) Such reconsideration shall be based on results of his continuing evaluation of a State plan after it has been granted an affirmative 18(e) determination.

§ 1902.48 The proceeding.

Whenever, as a result of his reconsideration, the Assistant Secretary proposes to revoke his affirmative 18(e) determination, he shall follow the procedures in the remaining sections of this subpart.

§ 1902.49 General notice.

(a) Whenever the Assistant Secretary proposes to revoke an affirmative 18(e)

29 CFR Ch. XVII (7-1-10 Edition)

determination, he shall publish a notice in the FEDERAL REGISTER meeting the requirements of the remaining paragraphs of this section. No later than 10 days following the publication of the notice in the FEDERAL REGISTER, the affected State agency shall publish, or cause to be published, reasonable notice within the State containing the same information.

(b) The notice shall indicate the reasons for the proposed action.

(c) The notice shall afford interested persons including the affected State, an opportunity to submit in writing, data, views, and arguments on the proposal within 35 days after publication of the notice in the FEDERAL REGISTER. The notice shall also provide that any interested person may request an informal hearing concerning the proposed revocation whenever particularized written objections thereto are filed within 35 days following publication of the notice in the FEDERAL REGISTER. If the Assistant Secretary finds that substantial objections have been filed, he shall afford an informal hearing on the proposed revocation under § 1902.50.

(d) The Assistant Secretary may, upon his own initiative, give notice of an informal hearing affording an opportunity for oral comments concerning the proposed revocation.

§ 1902.50 Informal hearing.

Any informal hearing shall be legislative in type. The rules of procedure for each hearing shall be those contained in § 1902.40 and will be published with the notice thereof.

§ 1902.51 Certification of the records of a hearing.

Upon completion of an informal hearing, the transcript thereof, together with written submissions, exhibits filed during the hearing, and any post-hearing presentations shall be certified by the officer presiding at the hearing to the Assistant Secretary.

§ 1902.52 Decision.

(a) After consideration of all relevant information which has been presented, the Assistant Secretary shall issue a decision on the continuation or revocation of the affirmative 18(e) determination.

Occupational Safety and Health Admin., Labor

§ 1903.2

(b) The decision revoking the determination shall also reflect the Assistant Secretary's determination that concurrent Federal enforcement and standards authority will be reinstated within the State for a reasonable time until he has withdrawn his approval of the plan, or any separable portion thereof, pursuant to part 1955 of this chapter or he has determined that the State has met the criteria for an 18(e) determination pursuant to the applicable procedures of this subpart.

§ 1902.53 Publication of decisions.

All decisions on the reconsideration of an affirmative 18(e) determination shall be published in the FEDERAL REGISTER.

PART 1903—INSPECTIONS, CITATIONS AND PROPOSED PENALTIES

Sec.

- 1903.1 Purpose and scope.
- 1903.2 Posting of notice; availability of the Act, regulations and applicable standards.
- 1903.3 Authority for inspection.
- 1903.4 Objection to inspection.
- 1903.5 Entry not a waiver.
- 1903.6 Advance notice of inspections.
- 1903.7 Conduct of inspections.
- 1903.8 Representatives of employers and employees.
- 1903.9 Trade secrets.
- 1903.10 Consultation with employees.
- 1903.11 Complaints by employees.
- 1903.12 Inspection not warranted; informal review.
- 1903.13 Imminent danger.
- 1903.14 Citations; notices of de minimis violations; policy regarding employee rescue activities.
- 1903.14a Petitions for modification of abatement date.
- 1903.15 Proposed penalties.
- 1903.16 Posting of citations.
- 1903.17 Employer and employee contests before the Review Commission.
- 1903.18 Failure to correct a violation for which a citation has been issued.
- 1903.19 Abatement verification.
- 1903.20 Informal conferences.
- 1903.21 State administration.
- 1903.22 Definitions.

AUTHORITY: Sections 8 and 9 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 658); 5 U.S.C. 553; Secretary of Labor's Order No. 1-90 (55 FR 9033) or 6-96 (62 FR 111), as applicable.

Section 1903.7 also issued under 5 U.S.C. 553.

SOURCE: 36 FR 17850, Sept. 4, 1971, unless otherwise noted.

§ 1903.1 Purpose and scope.

The Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1590 *et seq.*, 29 U.S.C. 651 *et seq.*) requires, in part, that every employer covered under the Act furnish to his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees. The Act also requires that employers comply with occupational safety and health standards promulgated under the Act, and that employees comply with standards, rules, regulations and orders issued under the Act which are applicable to their own actions and conduct. The Act authorizes the Department of Labor to conduct inspections, and to issue citations and proposed penalties for alleged violations. The Act, under section 20(b), also authorizes the Secretary of Health, Education, and Welfare to conduct inspections and to question employers and employees in connection with research and other related activities. The Act contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties by the Occupational Safety and Health Review Commission, if contested by an employer or by an employee or authorized representative of employees, and for judicial review. The purpose of this part 1903 is to prescribe rules and to set forth general policies for enforcement of the inspection, citation, and proposed penalty provisions of the Act. In situations where this part 1903 sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the Secretary or his designee determines that an alternative course of action would better serve the objectives of the Act.

§ 1903.2 Posting of notice; availability of the Act, regulations and applicable standards.

(a)(1) Each employer shall post and keep posted a notice or notices, to be